

Notice of Allowability

Application No.

10/027,848

Examiner

Anthony Weier

Applicant(s)

TOBIN, JOHN WILLIAM

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the transmittal filed 4/2/06.
2. ☒ The allowed claim(s) is/are 1,2,4,8,9,22 and 23.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Edward Squillante on 5/8/06.

The application has been amended as follows:

In claim 1, line 2, after "heating a beverage extract", insert – comprising at least about 50.0 % solids-; in line 8, replace "current, or" with –current or the heating means is heated with-; and in the last line, after "both", insert –wherein the beverage comprises less than about 45.0% by weight heated solvent".

Cancel claim 7.

EXAMINER'S REASONS FOR ALLOWANCE

2. The following is an examiner's statement of reasons for allowance:

The prior art of record neither discloses nor teaches the invention as presently amended. With Applicants arguments the following comments should be noted. In particular, Cornelius requires the preparation of a beverage which employs 70-85% solvent and teaches away from the instant claimed invention which calls for the preparation of a beverage employing less than about 45% heated solvent. With regard to Greenwald et al, the instant claims invention now requires the extract to comprise 50% solids. Greenwald et al, on the other hand, is treating a beverage that has already

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been brewed and clearly not an extract within the meaning of the instant claims.

Likewise, a liquid having greater than 50% solids could not reasonably be considered a drinkable beverage. Anson does not teach a heating means placed within a beverage extract wherein same is heated with electrical current or wherein the heating means is heated with heated solvent or both. Although Anson does disclose heating solvent by electrical means, Anson clearly does not heat *the formed extract* by electrical means placed within the beverage extract. Moreover, Anson does not heat a beverage means using heated solvent wherein said beverage means is placed in the beverage extract. Although Anson does manipulate the temperature of the extract by adding other heated water (near element 100), there is no means (as set forth in the instant claims) employed that is placed within the beverage extract to achieve same as called for in the instant claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Anthony Weier
May 8, 2006

Anthony Weier
Primary Examiner
Art Unit 1761



5/8/06